

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

SEAN PARSONS,

Plaintiff,

v.

Civil Action No. 3:20-CV-1682-K

LIBERTY INSURANCE
CORPORATION,

Defendant.

ORDER

Before the Court is the Report and Recommendation of United States Magistrate Judge David L. Horan, *see* Doc. No. 68, Defendant Liberty Insurance Corporation's Objections to the Report and Recommendation, *see* Doc. No. 69, Plaintiff Sean Parsons's Response to Defendant's Objection, *see* Doc. No. 72, and Defendant's Reply to Plaintiff's Response (Doc. No. 73).

Where there are no objections to a Magistrate Judge's Report and Recommendation, a District Court is to review the report for findings and conclusions that are either clearly erroneous or contrary to law. *United States v. Wilson*, 864 F.2d 1219, 1221 (5th Cir. 1989), *cert. denied*, 492 U.S. 918 (1989). However, a District Court is to review *de novo* a Magistrate Judge's Report and Recommendation in light of specific objections made by either party within ten days of receipt of the report. 28

U.S.C. § 636(b)(1). The Court need not consider objections that are frivolous, conclusive, or general in nature. *Battle v. United States Parole Comm'n*, 834 F.2d 419, 421 (5th Cir. 1987). Here, Defendant filed timely objections solely relating to the Magistrate Judge's finding that a material issue of fact remains as to whether Defendant has tendered all potential interest owed to Plaintiff for alleged violations of the Texas Prompt Payment of Claims Act ("TPPCA"). The Court has therefore reviewed the Report and Recommendation's findings on the interest payment under the *de novo* standard and the remaining portions of the Report and Recommendation under the clearly erroneous or contrary to law standard.

The Court has reviewed the Magistrate Judge's findings that Defendant's Motion for Summary Judgment on Plaintiff's claims for (1) breach of contract; (2) unfair or deceptive trade practices; (3) breach of the common law duty of good faith and fair dealing; (4) breach of express and implied warranty; (5) insurance fraud; and (6) violations of the Texas Prompt Payment of Claims Act based on alleged violations of Texas Insurance Code §§ 542.056 and 542.057 should be granted and concludes they are neither clearly erroneous nor contrary to law. Accordingly, the Court adopts the Magistrate Judge's Recommendation to grant summary judgment on these claims.

The Court has reviewed *de novo* the Magistrate Judge's finding that Defendant's summary judgment motion should be denied as to Plaintiff's TPPCA claim based on violations of § 542.058 because a genuine issue of material fact exists as to whether

Defendant tendered all potential interest owed Plaintiff. After reviewing Defendant's objections, and in light of the additional evidence provided elucidating the method by which Defendant calculated the potential interested owed and paid to Plaintiff, the Court concludes there remains no genuine issue of material fact as to Defendant's full payment of potential interested owed on Defendant's TPPCA violations. Defendant has shown it is entitled to summary judgment on this issue. Therefore, the Court rejects the Magistrate Judge's Recommendation to deny Defendant's Motion for Summary Judgment on this claim.

The Court therefore adopts in part and rejects in part the Magistrate Judge's Report and Recommendation. Accordingly, it is hereby ORDERED that the Magistrate Judge's Report and Recommendation to grant Defendant's Motion for Summary Judgment is adopted in part. Summary judgment is granted in Defendant's favor as to Plaintiff's claims for (1) breach of contract; (2) unfair or deceptive trade practices; (3) breach of the common law duty of good faith and fair dealing; (4) breach of express and implied warranty; (5) insurance fraud; and (6) violations of the Texas Prompt Payment of Claims Act based on alleged violations of Texas Insurance Code §§ 542.056 and 542.057.

It is furthered ORDERED that the Magistrate Judge's Report and Recommendation to deny Defendant's Motion for Summary Judgment (Doc. No. 23) is rejected in part. Summary judgment is therefore granted in Defendant's favor as to

Plaintiff's claim for violations of the Texas Prompt Payment of Claims Act based on alleged violations of Texas Insurance Code § 542.058 and Plaintiff's Motion for Summary Judgment (Doc. No. 48) is denied.

SO ORDERED.

Signed December 1st, 2021.


Ed Kinkeade
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UNITED STATES DISTRICT JUDGE